Filed 2/19/16 P. v. Houston CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. DARIUS KIREEM HOUSTON, Defendant and Appellant.	G049872, G050804 (Super. Ct. No. 13CF0993) O P I N I O N

Consolidated appeals from a judgment of the Superior Court of Orange County, David A. Hoffer, Judge. Affirmed.

Jean Matulis, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson and Heather M. Clark, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Darius Kireem Houston pled guilty to felony hit and run driving with injury and misdemeanor driving with a suspended license, and he admitted having a prior serious or violent conviction under the "Three Strikes" law. Defendant argues the court abused its discretion by denying his motion to continue sentencing and to withdraw his guilty plea. We reject defendant's assignments of error and affirm the judgment.

FACTS AND PROCEDURAL HISTORY

An information charged defendant with hit and run driving with injury (Veh. Code, § 20001, subd. (a)) and driving on a suspended license (Veh. Code, § 14601.5, subd. (a)), and it alleged defendant had a "strike" prior, a 2003 conviction for assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)).

According to the preliminary hearing testimony, defendant and Deeana Tafolla had been drinking together at a bar and they decided to go for a ride on defendants' motorcycle. Defendant drove the motorcycle with Tafolla as his passenger on the back. At some point defendant tried to pass a Hyundai on the right, but veered to the left, lost control and hit the Hyundai. Tafolla was badly injured.

Two eyewitnesses said defendant smelled of alcohol and became confrontational when told to remain at the scene. One of them rendered aid to Tafolla. The driver of the Hyundai, Carl Williams, asked defendant for his information, but defendant got angry and refused. Tafolla later gave the police defendant's first name, but nothing more.

Defendant filed a motion to dismiss under Penal Code section 995 on the grounds he substantially complied with Vehicle Code section 20001. He argued there was no need to render medical aid to Tafolla because bystanders were already caring for her, and there was no need to exchange information with her, because she knew him and where he lived. Defense counsel Marc McBride said he interviewed Tafolla, and she told him they had gone to defendant's home, after drinking at a bar and before going for a ride. However, her statements to McBride are not otherwise part of the record.

The court denied the motion to dismiss and set the case for trial. The People then filed a motion in limine to exclude evidence of Tafolla's purported statements to defense counsel. In the motion, the prosecutor stated his investigator had talked to Tafolla and she denied making those statements to defense counsel. However, there is no record of any discussions between the court and counsel about the motion.

On February 5, 2014, on the eve of trial and as part of a joint disposition involving five pending cases, defendant pled guilty to both counts and admitted his strike prior. The factual basis set out in the guilty plea form signed by defendant states in pertinent part, that he "knowingly, willfully, [and] unlawfully failed to stay at the scene [of an accident] and provide the injured person with care or leave them my name, address, and vehicle registration information . . . ."

At the sentencing hearing on March 14, McBride asked for a continuance, to investigate grounds for withdrawing the plea. McBride said he had recently learned Tafolla told someone else she had known where defendant lived. The court responded, "Well, I don't think – let me just say, I don't think there's any basis to withdraw the plea. The plea was knowingly and voluntarily taken. And I think it was – so I don't – I don't see any basis to withdraw it." McBride asserted, "if the court wants to go forward with sentencing, that's fine. I would prefer to put it over for a couple of weeks so that I could have – so that I could make sure that there isn't any reason to withdraw the plea . . . ."

The court conceded Tafolla likely knew where defendant lived, but said, "the exchanges that are required after an accident are more than just name and address. And there was no exchange that took place between the defendant and the victim at the time of the accident. So there's a lot more to it than just saying this is my name. This is where I live." The court also said, "This was a plea to the court – an open plea to the court, and it was knowing and voluntary. And I was the judge that took the plea, and I remember that. So I don't see any reason not to go ahead with the sentencing when we have victims who are here to make impact statements to the court."

The court then considered and denied defendant's motion to strike his prior conviction under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, weighed the aggravating and mitigating circumstances, sentenced defendant to four years in prison on the felony hit and run (two year middle term doubled under the Three Strikes law), and suspended imposition of sentence on the misdemeanor driving on a suspended license .

On March 24, defendant filed a notice of appeal (G049872) which did not expressly challenge the validity of the plea. Instead, it stated the basis for the appeal was, "Failure to continue sentencing to allow preparation of motion to withdraw guilty plea after new evidence disclosed to OCDA investigator and/or Victim made false statement." Defendant also filed a request for a certificate of probable cause, including a declaration in which defendant asserted, "On 2/4/14, Judge David Hoffer indicated to my counsel that he would not allow my counsel to argue that I had complied with the (1) 'render aid' and (2) 'provide identification' provisions to VC 20001(a)."

Defendant claimed the judge and the prosecutor "had, in essence, agreed that my act of stopping and waiting while the victim was being cared for by [S]amaritans satisfied the 'render aid' requirement," and improperly excluded evidence he "complied with the 'provide identification' requirement (because the victim knew where I lived having just ridden on the back of my motorcycle from my house and . . . communicating my address and name to the victim . . . was not required . . . .)"

Defendant said he pled guilty in light of the court's pretrial evidentiary ruling and "because my counsel had himself spoken to the victim and had no recording of the conversation where the victim had admitted that she had just come from my house and because the OCDA's office had obtained a statement from the victim indicating that she had never been to my house." According to defendant, he had since learned Tafolla never told the prosecution she knew where he lived until after he pled guilty. According to defendant, Judge Hoffer's denial of his request for a continuance to investigate this "new information" invalidated his plea and waiver of appellate rights.

On April 3, defendant filed an amended notice of appeal, which did expressly challenge the validity of the plea and other unspecified matters occurring after the plea. Defendant also filed another request for a certificate of probable cause (CPC), including a declaration in which his attorney stated, "A request for CPC is pending from defendant's initial notice of appeal filed March 24, 2014. This amended NOA is being filed to protect the defendant's appeal rights in case that request is denied."

On April 18, the court relieved McBride at defendant's request and appointed the Public Defender. The court then granted a defense request for a continuance and a hearing to rule on, in the court's words, a "motion for reconsideration, which may be a motion to withdraw a plea."

On May 16, defendant's new counsel, Christopher McGibbons, requested additional time to prepare a sentencing brief, and he invited the court to reconsider its sentence under Penal Code section 1170, subdivision (d). McGibbons did not specifically request time to prepare a motion to withdraw the plea. The court expressed concerns about whether defendant's notice of appeal had divested it of jurisdiction, but signed the certificate of probable cause to appeal from the guilty plea. The court noted, "there was a request for continuance of the sentencing, which the court denied, and that can be reviewed on appeal."

On June 27, the court recalled and vacated the March 14 sentence and ordered a new sentencing hearing on August 8.

On August 8, the court first observed, "I do not believe that any information . . . changes the way I see the circumstances in aggravation and in mitigation." But, at the end of the hearing the court changed its mind, struck defendant's "strike" prior under *Romero*, and imposed a three-year term on the hit and run.

On October 2, Defendant filed a notice of appeal from the August 8 judgment (G050804). This court later consolidated the two appeals for disposition at defendant's request.

DISCUSSION

Defendant contends the court abused its discretion by denying his request for a continuance at the first sentencing hearing. He also claims he made an oral motion to withdraw his plea, and the court erred in denying that too. He argues the court's evidentiary ruling, and his mistaken belief the court would impose a lesser sentence, invalidated his plea. The People assert defendant's motion to withdraw his plea was not timely and not meritorious. We conclude defendant's contentions lack merit.

"'A continuance in a criminal trial may only be granted for good cause. [Citation.] "The trial court's denial of a motion for continuance is reviewed for abuse of discretion." [Citation.] "There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied." [Citations.]' [Citation.]" (*People v. Hajek and Vo* (2014) 58 Cal.4th 1144, 1181.) Defendant bears the burden of establishing an abuse of discretion, which is found "only when the court exceeds the bounds of reason, all circumstances being considered. [Citations.]' [Citation.]" (*Ibid*.)

The abuse of discretion standard also applies to the denial of a motion to withdraw a guilty plea. (*People v. Archer* (2014) 230 Cal.App.4th 693, 702.) However, in order "'[t]o establish good cause to withdraw a guilty plea, the defendant must show by clear and convincing evidence that he or she was operating under mistake, ignorance, or any other factor overcoming the exercise of his or her free judgment, including inadvertence, fraud, or duress.' [Citations.] The defendant may not withdraw a plea because the defendant has changed his or her mind. [Citations.]" (*Ibid.*) Moreover, "if a defendant simply pleads guilty as charged without any promise by the judge or prosecutor he cannot later set aside the plea simply because he believed he would receive a lesser sentence. [Citations.]" (*People v. Superior Court* (*Smith*) (1978) 82 Cal.App.3d 909, 915 (*Smith*).)

Here, defendant fails to demonstrate good cause for a continuance, or to withdraw his plea, largely because Tafolla's alleged statements to McBride were not new evidence and they changed nothing. Vehicle Code section 20001, subdivision (a), states, "The driver of a vehicle involved in an accident resulting in injury to a person, other than himself or herself, or in the death of a person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 and 20004."

Section 20003 states, in pertinent part, "The driver of any vehicle involved in an accident resulting in injury to or death of any person shall also give his or her name, current residence address . . . the registration number of the vehicle he or she was driving . . . . The driver also shall render to any person injured in the accident reasonable assistance . . . ." (Veh. Code, § 20003, subd. (a).) As stated in *People v. Braz* (1998) 65 Cal.App.4th 425, "'The gravamen of a section 20001 offense . . . is not the initial injury of the victim, *but leaving the scene without presenting identification or rendering aid.*' [Citations.]" (*Id.* at p. 432.)

Here, regardless of whether Tafolla knew defendant and knew where he lived, defendant left the scene of an injury accident without presenting identifying information for himself or his motorcycle to either Tafolla or the Hyundai driver, and without rendering aid to Tafolla. In hindsight, defendant regrets his plea, but he fails to demonstrate the court abused its discretion by denying his motion to continue the sentencing to conduct further investigation.[1] Furthermore, defendant's plea was an open plea to the court and it resolved several cases. The ultimate penalty was not stated, nor guaranteed. Defendant cannot now complain because he received a more onerous sentence than he would have wished. (*Smith, supra,* 82 Cal.App.3d at p. 915.)

---

[1] Defendant also asserted the court's March 14, 2014 sentencing minute order was incorrect to the extent it ordered him to pay a $235 booking fee. But as the Attorney General notes, the August 8, 2014 sentencing minute order is the operative minute order and it contains no reference to any such booking fee. Thus, no correction is necessary.

DISPOSITION

The judgment is affirmed.

THOMPSON, J.

WE CONCUR:

FYBEL, ACTING P. J.

IKOLA, J.